

**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

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**Board Meeting****Thursday, September 16 and Friday, September 17, 1999****Board for Professional Engineers and Land Surveyors****Ramada Limited****3900 Old Town Avenue****San Diego, California****Thursday, September 16, 1999****1. Roll Call to Establish a Quorum**

The Meeting was called to order by President Shambeck at 3:30 p.m. Roll call was taken, and a quorum was established.

**Board Members Present:** George Shambeck (President), Kathy Hoffman (Vice-President), Gregg Brandow, Vincent DiTomaso, Ted Fairfield, James Foley, Andrew Hopwood, Steve Lazarian, Myrna Powell, Millicent Safran, Quang Vu.

David Chen arrived at 3:35 p.m.

**Board Members Absent:** Marilyn Lyon

**Board Staff Present:** Cindi Christenson (Executive Officer), Don Chang (Legal Counsel), Susan Ruff (Legal Counsel), Kevin A. Schunke (Special Assistant to the Executive Officer), Nancy Eissler (Attorney General Liaison Analyst), Jacqueline Barclay (Executive Analyst)

**Public Present:** Richard Ray, CLSA; Joyce Hirano, CALTRANS; Richard Siegmund, Lionel J. Suds, Bill Addington, Carrie Clark

**2. Public Comment**

President Shambeck asked for public comment. There was no public comment.

**3. Closed Session**

The Board went into Closed Session

The meeting was recessed at 4:35 p.m. after Closed Session.

## **Friday, September 17, 1999**

### **1. Roll Call to Establish a Quorum**

The Meeting was reconvened and called to order by President Shambeck at 9:00 a.m. Roll Call was taken, and a quorum was established.

**Board Members Present:** George Shambeck (President), Kathy Hoffman (Vice-President), Gregg Brandow, Vincent DiTomaso, Ted Fairfield, James Foley, Andrew Hopwood, Steve Lazarian, Myrna Powell, Millicent Safran, Quang Vu.

David Chen arrived at 9:02 a.m.

**Board Members Absent:** Marilyn Lyon

**Board Staff Present:** Cindi Christenson (Executive Officer), Don Chang (Legal Counsel), Susan Ruff (Legal Counsel), Kevin A. Schunke (Special Assistant to the Executive Officer), Nancy Eissler (Attorney General Liaison Analyst), Jacqueline Barclay (Executive Analyst)

**Public Present:** Richard Ray, CLSA; Joyce Hirano, CALTRANS; Richard Siegmund, Lionel J. Sudds, Bill Addington, Carrie Clark

### **2. Public Comment**

President Shambeck asked for public comment. There was no public comment.

### **4. Open Session to Announce Results of Closed Session.**

Ms. Christenson announced the results of closed session.

The Board discussed the performance evaluation of the Executive Officer.

The Board adopted the Default Decision in the Matter of the Accusation against William Shen. The Board adopted the Stipulation in the Matter of the Accusation against Mark Chin. The Board will issue a Decision in the Matter of the Accusation against L. Peter Petrovsky.

The Board denied the appeal of an October 1998 NCEES Professional Manufacturing Engineering examinee. The examinee did not meet or exceed the passing score established by the Board.

The Board approved for licensure the examinees who previously passed the April 1999 Civil, Mechanical, Electrical, Chemical, and Land Surveyor examination and recently passed the "take home" examination.

### **5. Approval of Consent Items**

Mr. Shambeck requested that item C, Approval of Delinquents, be removed from the Consent Items.

Ms. Ruff requested two changes be made to the July 23, 1999 Board Meeting Minutes.

1. Page 13; last paragraph, last sentence, correct sentence from "course of law" to "force of law".
2. Page 14, second paragraph, last sentence, change ..."without an administrative action" to "under a special administrative procedure."

**MOTION:** Mr. Hopwood/Mr. Chen moved to approve the minutes of the July 22 and 23 Board meeting as amended and candidates for certification and licensure including results of appeals considered in closed session.

**VOTE:** 12-0, Motion carried

### **Approval of Delinquents**

Ms. Powell/Mr. Hopwood moved to waive the second division examination for the following reinstating applicants:

1. Del B. Dausman
2. Russell H. Collins

**MOTION:** Ms. Powell/Ms Hoffman moved to require Heinz Poppendiek to take the Mechanical Engineering second division examination.

The Board discussed, at length, Heinz Poppendiek's qualifying experience with respect to his delinquent Mechanical Engineering license.

**VOTE:** 7-5, Motion carried. Mr. Brandow, Mr. Fairfield, Mr. Hopwood, Mr. Lazarian, and Mr. Shambeck voted "nay".

## **6. Comity and Temporary Authorization Applications**

Ms. Christenson noted a correction on page 32, licensure by comity. The applicant's name should be corrected from James B. Hatch to Robert J. Hatch.

Mr. Fairfield requested applicant Robert Landino be held over until he can review the applicant's experience.

**MOTION:** Mr. Lazarian/Mr. Hopwood moved to approve applicants Robert J. Hatch, Ramesh Dhingra, and Cannon F. Silver for licensure by Comity as provided on page 32, 33 and 34 of agenda.

**VOTE:** 12-0, Motion carried

**MOTION:** Ms. Hoffman/Mr. Hopwood moved to approve the applicants for licensure by Comity as provided on pages 35 and 36 of the agenda.

**VOTE:** 12-0, Motion carried

**7. Approval and Adoption of Board Rule 463.5 (Posting Notice of Licensure)**

Ms. Eissler presented the information contained in the agenda package to the Board. She advised the Board that only one set of comments had been received in response to the proposed language regarding posting notice of licensure. These comments were from Bob Coleman on behalf of the California Department of Transportation (CalTrans) and addressed two separate issues. The first issue addressed by Mr. Coleman was that a licensee is only given one wall certificate and if the licensee has more than one office, he would only be able to display his wall certificate in one office. Ms. Eissler explained that staff believes the current proposed language addresses this issue sufficiently since the language provides many different options for the licensee to choose from in providing notice to his clients; it does not just require him to display his wall certificate. The second issue addressed by Mr. Coleman was that the wall certificates do not contain the expiration date of the license and, therefore, just posting the wall certificate does not provide proof that the licensee has a current and valid license. Ms. Eissler informed the Board that staff believes there are other laws and regulations which address the issue of when expiration dates must be provided, such as when engineering or surveying work is signed and sealed. In addition, licensees are all provided with a pocket identification card, which contains the expiration date. Ms. Eissler stressed to the Board that the statutory requirement which prompted this regulation states that the licensee must provide notice to his clients that he is licensed by the California Board for Professional Engineers and Land Surveyors; it does not say that providing a license number is sufficient, and it does not address expiration dates. Ms. Eissler advised the Board that staff believes the language as noticed sufficiently addresses the statutory requirements and provides many options from which the licensee may choose to provide the required notice to his clients. She explained that the next step in the process is for the Board to formally adopt the language and direct staff to submit the rulemaking file to the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL) for review and approval.

Mr. Shambeck asked for any comments from the Board members.

Mr. Fairfield advised that he believes there are two flaws in the proposed language. It only speaks to the individual licensee and ignores big firms with licensed employees who have no contact with the public. He suggested adding language regarding the responsibility of the employer or the business. The proposed language also does not address people with mobile offices; he interprets the language as meaning that the licensee would need to carry his wall certificate with him to each office. He also pointed out that most contracts do not list the particular engineer who will be in responsible charge of the project.

Mr. Chang pointed out that the language provides many different options for providing notice in addition to displaying the wall certificate. The licensee can choose to display his wall certificate in one office and another method of

providing the notice in his other offices.

Mr. Foley asked if the word “primary” should be included before the word “office.” Mr. Chang advised that the statute requires the licensee to provide notice to all of his clients, not just those that go to his “primary” office; therefore, including the word “primary” would not ensure that the licensee was meeting the requirements of the statute.

Mr. DiTomaso stated that he believes this language will work for an individual or a small company, but it will not work for large corporations with many employees. Mr. Vu asked if requiring the licensee to present his pocket identification whenever it was requested would be sufficient notice. Mr. Chang advised that the language of the regulation would need to be amended to allow for that.

Ms. Hoffman stated that she believes the issue is being blown out of proportion. She interprets the regulation as requiring the notice to be provided at the time the licensee is offering the services, not whenever he is out doing work in the field. She believes the language as proposed provides different ways to accomplish the requirement.

Mr. Lazarian suggested deleting the phrase “of the premises where the licensee provides the licensed service” in subdivision (a) and (d). Mr. Chang advised that he does not believe that would accomplish the general requirement of providing notice to the client. He reiterated that the language as proposed provides many different options and that the notice does not have to be provided on an on-going basis.

Mr. Shambeck recommended that the Board approve the language as proposed and see how it works and what types of problems might arise. The regulation could then be amended at a later date to address those problems.

**MOTION:** Ms. Hoffman/Ms. Safran moved to adopt the language of Board Rule 463.5 (Title 16, California Code of Regulations) as noticed on July 2, 1999, as the final language to be submitted to the Director of the Department of Consumer Affairs and the Office of Administrative Law for review, approval, and filing with the Secretary of State.

Mr. Fairfield stated that the regulation applies to every licensee, but he believes that 90% of engineers do not really have clients because they work for corporations or government agencies. Mr. Chang pointed out that the regulation only applies to licensees who actually have clients.

Mr. Lazarian suggested that semi-colons and the word “or” be added to subdivision (a) so that it would read “displaying his or her wall certificate in a public area; or office; or individual work area of the premises where the licensee provides the licensed service.” Mr. Chang advised that this would be a non-substantive grammatical change, which would not require further notice.

Ms. Hoffman and Ms. Safran then amended their original motion to address Mr. Lazarian's suggestion.

**AMENDED MOTION:** Ms. Hoffman/Ms. Safran moved to adopt the language of Board Rule 463.5 (Title 16, California Code of Regulations) as noticed on July 2, 1999, with the nonsubstantive change so that subdivision (a) will read "displaying his or her wall certificate in a public area; or office; or individual work area of the premises where the licensee provides the licensed service" as the final language to be submitted to the Director of the Department of Consumer Affairs and the Office of Administrative Law for review, approval, and filing with the Secretary of State.

**VOTE:** 12-0, Motion carried

## **8. Traffic Engineering Examination Validation Report (Possible Action)**

Ms. Christenson reported that two years ago the Board requested the Office of Examination Resources (OER) to update the Traffic Engineering examination. This was done because there were tasks on the examination that had no relevance to what Traffic Engineers actually did in practice.

Ms. Christenson explained that OER requests that the Board adopt the test plan.

**MOTION:** Mr. Vu/Mr. Hopwood moved to adopt the Traffic Engineering Test Plan.

Mr. Fairfield advised that there is a dispute within the state regarding the "Design" content of the plan. Specifically, Task Statement T36, Design lighting systems to provide optimum levels of illumination, and T37, Prepare design of traffic signal systems to optimize traffic flow.

Mr. Fairfield stated that there are two schools of thought regarding these tasks. One says that Traffic Engineers are not authorized to design lighting systems, including traffic signal systems. Traffic Engineers can "plan" these systems, but not design them; the design work should be performed by Electrical Engineers. However, Mr. Fairfield also stated that many Traffic Engineers that he has come into contact with purport to design lighting systems and traffic signal systems.

Mr. Foley agreed that there is some controversy in this area.

Mr. DiTomaso stated that there are projects that require an Electrical Engineer to design the lighting. Complicated projects would require that the lighting systems be designed by an Electrical Engineer.

Mr. Foley stated that there is a Government Code section that states on circuit design, an Electrical Engineer has to sign off for the municipality for lighting systems.

Ms. Christenson recommended that the Board send the Test Plan back to OER for review and clarification of this task area. In addition, the TAC could work with the Traffic Engineers to define this area of content.

Mr. Vu/Mr. Hopwood rescinded the motion to approve the Traffic Engineering Test Plan.

**MOTION:** Mr. Vu/Ms. Safran moved to send the Traffic Engineering Test Plan back and directed Board staff to consult with OER for consideration of tasks which may be inconsistent with current law.

**VOTE:** 12-0, motion carried

## **9. Board Policy Resolutions**

Ms. Eissler advised the Board that staff had reviewed all of the Board Policy Resolutions (BPRs) as directed by the Board at the July meeting. Based on this review, staff has made recommendations on each BPR as described in the staff report included in the agenda packet. Ms. Eissler explained that some of these recommendations involve withdrawing the BPR and directing staff to prepare further recommendations for the Committees of the Board to review while other recommendations are to direct the Board's attorneys to do further research and provide more specific recommendations to the Board at a future meeting.

Mr. DiTomaso moved to withdraw all of the BPRs that the staff recommended should be withdrawn. There was no second to Mr. DiTomaso's motion. Therefore, the motion died for lack of a second.

There was discussion as to whether the Board should take no action on any of the BPRs at this time and wait to see whether the Governor signs the bill which would establish advisory interpretations as an alternative to the formal rulemaking process. It was pointed out that while many of the current BPRs may be appropriate for advisory interpretations, should that bill be signed, other BPRs may not.

The Board requested that its Legal Counsel, Gary Duke, provide a summary of the advisory interpretations procedures at the next Board meeting, assuming that the bill is signed by the Governor.

**MOTION:** Mr. Fairfield/Ms. Hoffman moved to take the following action on each Board Policy Resolution:

Policy Resolution 95-01: Withdraw BPR #95-01 and direct staff to use the legal opinion prepared by Gary Duke in response to any questions regarding #95-01.  
Policy Resolution 95-02: Withdraw BPR #95-02 and direct staff to use the legal opinion prepared by Gary Duke and Business and Professions Code section 7196.1 in response to any questions regarding #95-02.

Policy Resolution 95-03: Withdraw BPR #95-03 and refer the issues addressed in it to the Enforcement Committee to discuss possible rulemaking.

Policy Resolution 95-04: Withdraw BPR #95-04 and refer the issues addressed in it the Enforcement Committee to discuss possible updates or revisions.

Policy Resolution 95-05: Withdraw BPR #95-05.

Policy Resolution 96-01: Withdraw BPR #96-01 and refer the issues addressed in it to the Enforcement Committee to discuss possible rulemaking.

Policy Resolution 96-02: Withdraw BPR #96-02.

Policy Resolution 96-03: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 96-04: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 96-05: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 96-06: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 96-07: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 96-08: Withdraw BPR #96-08 and refer the issues addressed in it to the Examinations/Qualifications Committee for discussion. Direct the Board's Legal Counsel to advise the Committee whether this issue can be addressed by regulation or whether a statutory change would be required.

Policy Resolution 96-09: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 97-01: Withdraw BPR #97-01 and direct the Board's Legal Counsel to prepare a legal opinion addressing this issue.

Policy Resolution 97-02: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 97-03: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 98-01: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 98-03: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

Policy Resolution 98-04: Direct the Board's attorneys to review and provide a recommendation at the next Board meeting.

**VOTE:** 12-0, motion carried.

## **10. Technical Advisory Committee Reports**

- a. Land Surveying  
Mr. Shambeck reported that the next LSTAC meeting is October 1, 1999.
- b. Civil/Geotechnical Engineering  
Mr. Foley reported that the next CE/GE TAC meeting is September 30, 1999.
- c. Electrical Engineering  
Mr. DiTomaso reported that the next EE TAC meeting is September 27, 1999.



- d. Mechanical Engineering  
Mr. Vu reported that the next ME TAC meeting is September 21, 1999.
- e. Structural Engineering  
Mr. Brandow reported that there is no scheduled SE TAC meeting before the November 5, 1999 Board Meeting.

## 11. Liaison Reports

- a. ABET  
Mr. Schunke provided an updated handout of the list of California Schools undergoing review for ABET accreditation. The reviews begin on Sunday at 12:00 and continue through Tuesday evening.

The following Board members will be attending a review for ABET accreditation:

Mr. Hopwood will be attending the San Jose State review on September 26 - 28, 1999.

Ms. Powell will be attending the Cal Poly, Pomona review on October 10 - 12, 1999.

Mr. DiTomaso will be attending the California Institute of Technology on October 24-26, 1999.

Any other Board members interested in attending a review should contact Jacqueline Barclay.

- b. NCEES  
Mr. Shambeck reported on the Annual Meeting in Buffalo, N.Y. Mr. Shambeck reported that this meeting was the first time members voted electronically. The NCEES Board authorized stage one of computer-based testing plan.

Mr. Fairfield reported that the Task Force made two recommendations to the Council.

- 1) The Council make a long term commitment to computer-based testing;
- 2) A two-stage process to launch the first recommendation.
  - a. From present until August 2000, hire a non-staff person, but a consultant to staff, to prepare a cost analysis of computer testing for the EIT and possibly the LSIT examinations.
  - b. In August 2000, if the Council concurs that the process is workable and affordable, administer a trial or pilot test where approximately 100 EIT and/or LSIT candidates would take the exam on a computer.

Mr. Shambeck reported that the Council voted to amend the Model Law pertaining to the definition of Professional Land Surveyor. Mr. Shambeck objected to the definition and has written to the President of NCEES. Mr. Shambeck indicated that the Council along with UPL will review the Model Law and Mr. Shambeck's objections.

Mr. Shambeck reported on the Governance Report. The one vote per state did not pass. The Council voted unanimously to approve the policy that the California Board uses with regard to computers and calculators at examinations.

Mr. Shambeck reported that the 2000 Western Zone meeting will be held in Grand Junction, Colorado, and the 2001 Western Zone meeting will be held in Hawaii.

Mr. Shambeck reported that Mr. Fairfield is the Western Zone Vice-President and liaison to Education Assessment and Qualification Mobility Task Force. Ms. Powell is a member of the Governance Committee. Mr. Shambeck is a member of the Finance Committee and a consultant to the Land Surveyor Examination Committee. Mr. Vu is a member of the Electronic Technology Task Force. Ms. Christenson is a member of the Examination Policy and Procedures Committee and Chair of the Computer-Based Testing Task Force. Mr. Lazarian is the Chair of International Relations.

c. International Relations

Mr. Lazarian reported that the Governance Committee recommended that the International Relations Committee would be called upon on an "ad hoc" basis when needed.

Mr. Fairfield reported on USCIEP – NAFTA related issues.

Mr. Fairfield reported on the Mobility Task Force. The Task Force is looking into the process of simplifying the process of comity throughout all states. The process of comity is currently affected by the states that use the Model Law term and states that have discipline specific licenses.

d. Technical and Professional Societies  
No report given.

**12. President's Report**

Mr. Shambeck indicated that he has already discussed, under other items, the relevant parts of his President's Report.

**13. Executive Officer's Report**

1. Fiscal Report

a. Executive Summary Report

Ms. Christenson indicated the report was attached for reference and the report was through Fiscal Year 98/99.

Ms. Christenson reported that she had the list of all successful examinees from the April 1999 examinations for the Board Members to review.

2. Personnel

a. New Hires and Vacancies

Ms. Christenson reported that two cashiers, an Office Technician who will work at the EIT evaluator desk, and an Office Services Supervisor have been hired. Ms. Christenson reported that the Office Assistant in the Examination Unit is leaving.

3. Enforcement/Examinations/Licensing

Ms. Christenson reported that the Enforcement staff is working on getting all old cases closed.

Ms. Christenson reported that the Examination staff is preparing for the October examinations. This exam cycle, with the use of our ATS system, we have the ability to release admission notices, as applicants become qualified.

Ms. Christenson reported that Licensing unit is experiencing an increase in work due to the volume of data entry in ATS.

4. Publications/Website

a. Fall Bulletin

Ms. Christenson reported that Diane Barbosa is putting together articles for the fall bulletin. Any recommendations for articles for the fall bulletin should be given to Diane Barbosa.

b. Website

Staff is working on putting all Board applications on the Website.

5. Other

a. DCA

Ms. Christenson reported that the Director is now including all Executive Officers in meetings that in the past would have only included the Director and the Department Bureau Chiefs. The Director has a mission to have more consumer advocacy groups involved with the Department. The Department is working on developing a contract pilot program that will allow for a more streamlined process for contracting with outside vendors.

b. Mandatory Ethics Training for Board Members

Ms. Christenson reported that all Board Members must take a training course on ethics. This training involves one of two choices:

- 1) Watch a video and take a test.
- 2) Or take the test on the Internet.

In addition, the Department requires a 45-minute in person training

course. Ms. Christenson recommends that the Board use one day in addition to our December Board meeting to take the in person training and the video training.

Ms. Christenson will provide to the Board members the web address for those members who want to take the test online. The deadline to take this test is December 31, 1999.

#### **14. Committee Reports**

a. Administrative

Mr. DiTomaso reported on the September 16, 1999 Committee Meeting.

b. Enforcement

Mr. Foley reported on the September 16, 1999 Committee Meeting.

c. Examination/Qualification

Ms. Safran reported on the September 16, 1999 Committee Meeting.

Professional Land Surveyor Examination – Educational Requirements and the Reference Process for Professional Land Surveyor Candidates

**MOTION:** Mr. Vu/Mr. Fairfield moved to approve Alternative #2, to conduct pre-examination discussions at Board outreach programs and review sample material with attendees with respect to educational requirements and reference process for Professional Land Surveyor.

**VOTE:** 12-0, motion carried.

Structural Engineering Technical Advisory Committee (SETAC) Report on the Concept of Interview Requirements for Structural Engineering Applicant References

**MOTION:** Mr. Vu/Mr. Fairfield moved to approve the amendment to the PMES contract up to \$100,000. Included in this amendment is a review of the test plan for the structural engineering examination.

**VOTE:** 12-0, motion carried.

d. Legislative

Mr. Brandow reported on the September 16, 1999 Committee Meeting

#### **15. Approval of Board Travel (Possible Action)**

Mr. Shambeck reported that he has been asked to attend a CELSOC meeting in Visalia in November 1999.

**MOTION:** Ms. Hoffman/Mr. Vu moved to approve Mr. Shambeck's travel to the November CELSOC meeting.

**VOTE:** 12-0, motion carried.

Mr. Fairfield reported that he would be attending a NCEES meeting in Las Vegas in November 1999.

**14. Other Items Not Requiring Board Action**

None.

**15. Adjourn**

Mr. Hopwood/Mr. Lazarian moved to adjourn. Meeting was adjourned at 12:30 p.m.